

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
Nashville Division**

L.W., by and through her parents and next friends, Samantha Williams and Brian Williams, et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

JONATHAN SKRMETTI, in his official capacity as the Tennessee Attorney General and Reporter, et al.,

Defendants.

Civil No. 3:23-cv-00376

Judge Richardson

Judge Newbern

**PLAINTIFFS' OPPOSITION TO MOTION FOR LEAVE TO FILE
BRIEF OF AMICUS CURIAE**

The States of Arkansas, Alabama, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, South Carolina, South Dakota, and Utah (the "Proposed Amici") seek leave to file a purported amicus brief in support of Defendants' opposition to Plaintiffs' preliminary injunction motion. Proposed Amici's motion is untimely, and for this reason, Private Plaintiffs oppose the motion and respectfully request that the Court deny the motion for leave to file an amicus brief.

"Participation as an amicus is a privilege within the sound discretion of the courts, depending upon a finding that the proffered information is timely, useful, or otherwise necessary to the administration of justice." *Bright v. Brookdale Senior Living, Inc.*, Nos. 3:19-cv-00374, 3:20-cv-00353, 2020 WL 12893860, at *1 (M.D. Tenn. Oct. 23, 2020) (citing *United States v.*

State of Mich., 940 F.2d 143, 165 (6th Cir. 1991) (internal quotations omitted). Although there is no procedural rule in this Court regarding the timely filing of an amicus brief, under Rule 29(a)(6) of the Federal Rules of Appellate Procedure, an amicus curiae must file its brief “no later than 7 days after the principal brief of the party being supported is filed.” *See Connecticut v. American Elec. Power Co.*, 582 F.3d 309, 320 n.2 (2d Cir. 2009) (declining to consider late-filed amicus brief), *rev’d on other grounds*, 564 U.S. 410 (2011). Compliance with Rule 29(a)(6) ensures that the opposing party is not prejudiced by the presentation of arguments to which they have no opportunity to respond.

Proposed Amici do not proffer their motion in a timely manner. The Private Plaintiffs filed their Motion for Preliminary Injunction [ECF No. 21] (the “Preliminary Injunction Motion”) on April 21, 2023 (46 days before Proposed Amici filed their motion). Defendants filed their Response in Opposition to Plaintiffs’ Motion for a Preliminary Injunction [ECF No. 112] on May 19, 2023 (18 days before Proposed Amici filed their motion). Plaintiffs filed their reply [ECF No. 146] on June 1, 2023 (5 days before Proposed Amici filed their motion). Proposed Amici waited over six weeks after Plaintiffs filed the Preliminary Injunction Motion and until briefing had concluded—and just weeks before the Health Care Ban is scheduled to go into effect—to seek leave to file their proposed brief.¹ Their delay is plainly prejudicial and warrants denying the motion.

Briefing on the Private Plaintiffs’ Preliminary Injunction Motion has concluded. Thus, Plaintiffs submit that the Court should find the Proposed Amici’s motion untimely and deny them leave to file their amicus brief.

¹ Counsel for the Proposed Amici informed counsel for Plaintiffs of its intention to file the motion for leave to file amicus [ECF No. 149] only a few hours before filing on June 6, 2023.

Dated: June 7, 2023

/s/ Stella Yarbrough

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2023, the undersigned filed the foregoing Plaintiffs' Opposition to Motion for Leave to File Brief of Amicus Curiae via this Court's electronic filing system, which sent notice of such filing to the following counsel of record:

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